

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

MICHAEL J. GREENE,

Plaintiff,

v.

CIVIL ACTION NO. 1:15-15723

WILLIAM J. SADLER, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

I. Introduction

By Standing Order, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendation ("PF&R"). Magistrate Judge VanDervort submitted his proposed findings and recommendation on December 7, 2015. In that Proposed Findings and Recommendation, the magistrate judge recommended that this court deny plaintiff's application to proceed without prepayment of fees and costs, dismiss plaintiff's complaint, and remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363

(4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). Moreover, this court need not conduct a de novo review when a petitioner "makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Petitioner filed objections to the Proposed Findings and Recommendation on December 17, 2015. Because petitioner filed his objections timely, this court has conducted a de novo review of the record as to those objections. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.").

II. Background

On December 2, 2015, plaintiff filed the instant complaint, pursuant to 42 U.S.C. § 1983, against William J. Sadler, Mercer County Circuit Court Judge; George V. Sitler, Chief Assistant Prosecuting Attorney for Mercer County; Bill Huffman, Attorney; and Scott A. Ash, Mercer County Prosecuting Attorney. Specifically, Greene claims that, on May 6, 2012, he entered into an unknowing and unintelligent plea of guilty in Mercer County Circuit Court.

Magistrate Judge VanDervort recommended dismissal of plaintiff's complaint for several reasons. First, he noted that

plaintiff's § 1983 claim is not cognizable pursuant to Heck v. Humphrey, 512 U.S. 477 (1994), because his criminal conviction has not been invalidated. Magistrate Judge VanDervort also concluded that the claims against Judge Sadler should be dismissed because he is protected from suit by judicial immunity. As to the claims against defendants Ash and Sitler, Magistrate Judge VanDervort recommended dismissal on the basis of prosecutorial immunity. Finally, he noted that any § 1983 claim against defendant Huffman must fail because Huffman was not a state actor.

Rather than address these obstacles to suit, Greene's objections are directed to the merits of his case. Therefore, his objections do not direct the court to a specific error in the magistrate's proposed findings and recommendations and, therefore, they are without merit.

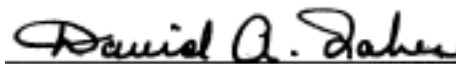
III. Conclusion

Based on the foregoing, the court hereby OVERRULES plaintiff's objections and CONFIRMS and ACCEPTS the factual and legal analysis contained within the Proposed Findings and Recommendation. Accordingly, the court DENIES plaintiff's application to proceed without prepayment of fees and costs; DISMISSES plaintiff's complaint, and DIRECTS the Clerk to remove this matter from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and to plaintiff pro se.

IT IS SO ORDERED this 26th day of July, 2016.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge